S413-11

Calendar No. 786

101ST CONGRESS
2d Session

SENATE

REPORT
101-431

PROVIDING FOR FEDERAL RECOGNITION OF THE JENA BAND OF CHOCTAWS OF LOUISIANA, AND FOR OTHER PURPOSES

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1918]

The Select Committee on Indian Affairs to which was referred the bill (S. 1918) to provide for Federal recognition of the Jena Band of Choctaws of Louisiana, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

The purpose of S. 1918 is to provide for Federal recognition of the Jena Band of Choctaw of Louisiana, and for other purposes.

BACKGROUND

The Jena Band of Choctaw live in and around Jena, Louisiana, just to the Northeast of the center of the state. The Band has about 150 members, about 60% of which are from half to full blood Choctaw. Although they were not statutorily terminated as other tribes which have been recently restored, the Jena have a history of being treated as an Indian entity by the Federal government.

Identified as a group of full bloods, the Jena Band of Choctaw were authorized to take allotments in Oklahoma under the General Allotment or Dawes Act. Around the turn of the century the Jena

Choctaw were requested to appear and give testimony before the Dawes Commission in Muskogee, Oklahoma. Having to work their way to Oklahoma to offset expenses, the Band walked to Oklahoma over the course of nine months only to find that they were allowed to apply for, but not yet receive, such allotments. They then walked back to Louisiana over the course of several more months.

Upon returning home to Louisiana, they were notified that they were identified as full-blood Choctaw entitled to land and services from the United States. The notification stated that the Band could return to Oklahoma within four and a half months to finally to accept allotments. Tired, penniless, and mistrusting, and facing an impossible timeframe, the Jena found themselves not up to a second walk to Oklahoma to claim their allotments, but remained in Louisiana where they still reside.

In 1938, the Assistant Commissioner of the Bureau of Indian Affairs authorized the relocation of the Band to reservation lands in Mississippi where the Jena would once again be eligible for services. The Jena Band of Choctaw indicated its willingness to relocate, but the United States did not follow through with the relocation. Once again the Jena missed their rightful opportunity to enjoy Federal benefits because of their status as an Indian tribe.

The group has been the beneficiary of Federal funds for Indians through various programs. The Bureau of Indian Affairs funded an all-Indian contract school in the community of Jena, Louisiana between 1934 and 1938. The school was closed in anticipation of the tribe's promised relocation to Mississippi in 1938, which never occurred.

The Jena Band filed a letter to petition for acknowledgment with the BIA on February 1, 1979. A documented petition was submitted on May 2, 1985. The group received letters for obvious deficiency and prepared their petition for active review in 1987. However, the group has requested more time to meet standards which have been clarified by recent findings on petitions submitted by other groups. The B.I.A. has not detailed for the Committee the specific deficiencies of the Jena Choctaw petition.

A hearing was held on S. 1918 on April 23, 1990, which revealed support for the bill from the State of Louisiana, other recognized tribes in the state, and the Mississippi Band of Choctaw, a sibling band to the Jena Choctaw. In a letter to the office of the Attorney General of the State of Louisiana written subsequent to the Committee hearing on this bill, the Chairman of the Jena Band of Choctaw stated that since their ancestors did not arrive in the State of Louisiana until around 1850, the tribe does not contend that it has an aboriginal land claim within the State of Louisiana, though it may have a claim in other states. No inference should be drawn from this communication that legal standing to bring an aboriginal land claim depends upon whether or not a tribe is Federally reognized. Indeed, the case of *Joint Tribal Council of Passamaquoddy* v. *Morton* held that Federal recognition is not a prerequisite to maintaining such an action.

LEGISLATIVE HISTORY

Senator Johnston with Senator Breaux, both of Louisiana, introduced S. 1918 on November 17, 1989. The bill was referred to the Select Committee on Indian Affairs for consideration. A hearing was held on S. 1918 on April 23, 1990. In an open business session on June 21, 1990, the bill was considered by the Committee and ordered reported with an amendment in the nature of a substitute.

Senators McCain and Gorton expressed no opinion on the merits of recognition of this tribe but wished to be recorded as opposing the bill on grounds that general legislation should be enacted to address the difficulties in the administrative process relating to acknowledgment and recognition.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 21, 1990, the Select Committee on Indian Affairs, in an open business session, considered S. 1918 and the bill was ordered reported with an amendment in the nature of a substitute, with a recommendation that the bill, as amended, be passed by the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be cited as the "Jena Band of Choctaws Recognition Act".

Section 2 provides definitions for the terms "tribe", "Secretary", "Interim Council", "member", and "State."

Section 3 extends Federal recognition and applicable Federal laws to the Jena Band of Choctaw.

Section 4 provides the restoration of prior rights and savings of existing rights of the tribe and its members and further provides for the acceptance by the Secretary of property to be held in trust for the tribe.

Section 5 provides for the extension of all Federal services to the tribe and its members because of their status as Federally recognized Indians.

Section 6 provides for an Interim Council to govern the tribe until a constitution is adopted.

Section 7 provides guidelines for the requirements for membership and the compilation of the membership roll.

Section 8 provides that the Secretary shall conduct an election at the request of the Interim Council for the tribe to adopt a constitution in accordance with the Indian Reorganization Act of 1934 and thereafter for an election of tribal officials in accordance with such constitution.

Section 9 provides Secretarial authority to prescribe regulations to carry out the provisions of this Act.

Section 10 provides the guidelines for acquisition of property and transference to the Secretary to be held in trust for the tribe.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 12, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1918, the Jena Band of Choctaws Recognition Act, as ordered reported by the Senate Select Committee on Indian Affairs on June 21, 1990.

This bill would grant federal recognition to the Jena Band of Choctaws. Although the bill does not specifically authorize the appropriation of funds, it would make all members of the tribe eligible for all services and benefits available to federally recognized Indian tribes. Thus, while no additional expenditures are mandated by the bill, relevant federal agencies would be required to include members of the tribe among those eligible for benefits and may seek additional funds in order to provide such benefits. CBO estimates that the average annual cost of services and benefits provided nationally is about $3,000 per eligible Indian. If this average is applicable to the Jena Band of Choctaws, the annual cost would be about $400,000.

S. 1918 also would require that the Secretary of the Interior prepare an economic development plan in conjunction with the tribe. Based on information from the Bureau of Indian Affairs, we estimate that this will cost about $100,000 per year in fiscal years 1991 and 1992.

Under S. 1918, the tribe may turn over land to be held in trust by the Secretary of the Interior. Since land held in trust becomes non-taxable, this bill could result in some loss of property tax revenues to state and local governments. Currently, the tribe's holdings are minimal and we do not anticipate a significant revenue loss. However, it is not possible to predict the impact of future revenue losses, since they would result from the voluntary transfer of land which has not yet been purchased.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1918 will have some regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee received the following letters from the Department of the Interior:

THE SECRETARY OF THE INTERIOR,
Washington, June 20, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: It is our understanding that on June 21, your Committee plans to mark up S. 381, which would provide Federal recognition to the Mowa Band of Choctaw Indians of Alabama; and S. 1918, which would provide Federal recognition to the Jena Band of Choctaws of Louisiana.

As you know, the Administration provided written testimony on these two bills for the March 28, 1990 hearing held by your Committee. In our testimony, and in our follow-up reports dated April 30, 1990, we strongly opposed enactment of both S. 381 and S. 1918. We would like to reiterate our strong opposition to these bills. Further, we would recommend disapproval by the President if the Congress were to enact these two bills.

We strongly believe that all groups seeking recognition should go through the federal acknowledgment process as prescribed in the Code of Federal Regulations (25 CFR 83). Prior to 1978, requests for recognition were decided on a case-by-case basis without Federal regulations. In 1978, regulations were established to deal with requests for acknowledgment on a uniform and consistent basis. The acknowledgment criteria are fair and the process objective. The acknowledgment process established in 1978 provides each petitioning group the opportunity for an unbiased, detailed evaluation of their documented petition for acknowledgment. However, the enactment of S. 381 and S. 1918 would circumvent the standard recognition process that all similarly situated groups are required to complete. This would be unfair to the other groups seeking recognition and further weaken the administrative process which was established with the support of the Congress.

A decision to acknowledge a group as an Indian tribe establishes a perpetual government-to-government relationship between a tribe and the United States, making them eligible for services and benefits from the Bureau of Indian Affairs, Indian Health Service, and other Federal agencies which they would not be entitled to without Federal recognition.

For these reasons, we strongly urge that your Committee not approve these bills.

The Office of Management and Budget has advised that enactment of this legislation would not be in accord with the President's program.

Sincerely,

MANUEL LUJAN, Jr.

U S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 30, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on S. 1918, the "Jena Band of Choctaws Recognition Act."

We are strongly opposed to the enactment of S. 1918.

S. 1918 would provide Federal recognition for the Jena Band of Choctaws of Louisiana. In addition, section 7 of S. 1918 would require the Secretary to compile a roll of individuals who are members of the Jena Band of Choctaws and, in conjunction with an interim council who are not named, would be required to determine the qualifications of membership.

This group should go through the Federal acknowledgement process as prescribed in the Code of Federal Regulations (25 CFR 83). Our acknowledgment criteria are fair and the process objective. The acknowledgment process established in 1978 provides each petitioning group the opportunity for an unbiased, detailed evaluation of their documented petition for acknowledgment. However, S. 1918 would circumvent the standard recognition process that all similarly situated groups are required to complete. This would be unfair to the other groups seeking recognition and further weaken the administrative process which was established with the support of Congress.

A decision to acknowledge a group as an Indian tribe establishes a perpetual government-to-government relationship between a tribe and the Untied States, making them eligible for services and benefits from the Bureau of Indian Affairs, Indian Health Service, and other Federal agencies which they would not be entitled to without Federal recognition. Prior to 1978, requests for recognition were decided on a case-by-case basis without Federal regulations. In 1978 regulations were established to deal with requests for acknowledgment on a uniform and consistent basis.

Recently, the Jena Band sought to gain Federal recognition by claiming prior recognition for a few years in the 1930's when the Bureau of Indian Affairs used funds marked for the education of Indians in public schools to fund a school for Indians at Jena, Louisiana. No tribal funding or assistance was provided and we do not have sufficient information that the group continued to exist as a tribe after the 1930's. The Secretary was asked to recognize the group on the basis of this educational relationship. We have determined that the Jena Band's situation is not unique. Numerous groups have had some Federal contact in the past. It is by no means clear that every group whose ancestors in the past have had some form of Federal recognition should automatically be granted Federal acknowledgment. Actions in this case, while offering Federal services to a group of individuals, do not in our view constitute clear recognition of status as a tribal entity.

We have particular concerns with section 7 of S. 1918. The determination of a tribe's membership qualifications and the compilation of its membership roll are responsibilities of the tribe, not of

the Secretary. The Jena Band submitted a listing of its members as part of its acknowledgment petition. Similarly, its constitution provides specific membership qualifications. The list provided for acknowledgement purposes should be specified as the groups's base role in its constitution, and membership in the tribe should be limited to those individuals whose names are included on the roll or who are descendants of individuals whose names are included. We also recommend that the group's roll be subject to Bureau approval.

THE JENA BAND OF CHOCTAWS PETITION

The Jena Band of Choctaws submitted its initial undocumented letter petition on February 1, 1979. A documented petition was received on May 2, 1985. Following a review for obvious deficiencies and significant omissions in accordance with the regulations, the petitioner submitted additional materials to further supplement its petition and respond to deficiencies noted. The petition was considered ready for active consideration on October 1, 1987; however, the group informed us on November 7, 1988, that they had hired an anthropologist to do additional community studies. We are still awaiting delivery of these studies to complete the petition.

Recognition of the Jena Band outside the established administrative process would set a precedent which will encourage many other petitioners to follow suit claiming unique and/or extenuating circumstances.

Our brief review of the petition suggests that there are questions which need to be considered in more depth. The petitioner's continuing research suggests that these are valid questions. Since such questions are normally raised, thoroughly explored, and often answered satisfactorily during active consideration, we recommended that the Jena Band of Choctaws be encouraged to submit the remaining petition materials and go through the administrative process like all other petitioners.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

EDDIE F. BROWN,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 1918 will not result in any changes in existing law.

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